The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

**MEMO# 30913**

October 17, 2017

# Draft ICI Global Comment Letter on European Commission Proposal to Impose Location Requirement on Clearing Houses; Member Comment Requested by October 20

[30913]

October 17, 2017

TO: Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
ICI Global Trading & Markets Committee
Securities Operations Advisory Committee RE: Draft ICI Global Comment Letter on European Commission Proposal to Impose Location Requirement on Clearing Houses; Member Comment Requested by October 20

As previously reported, the European Commission (Commission) recently issued a proposal to amend the supervisory regime for central counterparties (CCPs) under the European Market Infrastructure Regulation (EMIR).[1] The Proposal would have significant implications for all CCPs that operate in the European Union, especially those that are established in third-countries. The Proposal would provide for greater oversight of all third-country CCPs and create a regulatory mechanism to require a third-country CCP to relocate to the European Union to provide clearing services within the union if EU authorities determine that the CCP poses too much risk to the union or any member state(s).

ICI Global's draft comment letter on the Proposal is attached for your review**. If you have comments on the draft letter please contact Jennifer Choi (jennifer.choi@ici.org) and George Gilbert (george.gilbert@ici.org) by Friday, October 20.** We anticipate filing the letter before noon on Monday, October 23.

The draft letter expresses concern with the proposal to empower EU authorities to compel a third-country CCP to relocate to the European Union. The letter explains how regulated funds and other investors would be harmed if the Proposal's CCP location requirement reduces liquidity in derivatives markets and recommends that the Commission take a less onerous approach to the supervision of third-country CCPs. The letter makes the following points:

- A CCP location policy could fragment liquidity along regional boundaries, making derivatives markets shallower, more geographically concentrated, and less resilient than they are today;
- Fragmentation would reduce market quality and increase costs for regulated funds and other investors;
- A fragmented derivatives market likely would result in less resilient CCPs, and regulated funds would be particularly vulnerable because it could be more difficult to port positions from a failing clearing member to a healthy one; and
- The European Commission should consider alternatives to a location policy. One potential alternative approach is for EU authorities to apply EMIR to systemically important third-country CCPs and ensure that EMIR can be enforced rather than granting these CCPs recognition. If the CCPs can satisfy the EMIR standard, we do not see any additional regulatory benefit of physically locating its facilities in the European Union.

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George M. Gilbert
Assistant General Counsel

Attachment

**endnotes**

[1] *See* ICI Memorandum No. 30760 (June 30, 2017), *available at* https://www.iciglobal.org/iciglobal/pubs/memos/memo30760; Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, dated June 13, 2017, *available at* http://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-331_en (Proposal).

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